

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOHN F. PORTILLO, RAFAEL SUAREZ,	:	C.A. No.: 15-cv-7908-JHR-KMW
MARTIN DURAN, GERMAN BENCOSME,	:	
EDIN VARGAS, LUIS A. HERNANDEZ,	:	<u>Document Electronically Filed</u>
JOSUE PAZ, and ALVARO CASTANEDA,	:	
individually and behalf of all others similarly	:	*Oral Argument Requested*
situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NATIONAL FREIGHT, INC. and NFI	:	
INTERACTIVE LOGISTICS, INC.,	:	
	:	
Defendants.	:	

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT REGARDING THE DAMAGES
AVAILABLE UNDER THE NJWPL

Pursuant to Rule 56 and Local Rule 56.1(a), Plaintiffs hereby submit the following Statement of Undisputed Material Facts in support of their Motion for Partial Summary Judgment Regarding the Damages Available Under the NJWPL.

1. Plaintiffs filed this class action on June 22, 2015 in New Jersey Superior Court, and NFI removed the case to this Court on November 5, 2015 (Dkt. 1).

2. NFI is a logistics company that provides freight delivery for its client companies including Trader Joe's. (NFI Statement of Facts ("NFI SOF") ¶¶ 2-3, Dkt. 67.)¹ Since at least 2009, NFI has contracted with Trader Joe's to make deliveries of Trader Joe's foods and other items. NFI drivers begin their work at Trader Joe's warehouses in Nazareth and Hatfield, Pennsylvania, where NFI maintains offices, and delivers its food products to Trader Joe's stores throughout the Eastern Seaboard. (NFI SOF ¶¶ 36-38, Dkt. 67.)

3. Plaintiffs filed their First Amended Complaint on August 13, 2018 (Dkt. 102).

¹ In its effort to argue that Massachusetts law did not apply to Plaintiffs' claims, NFI moved for summary judgment on those issues, which the Court held in abeyance so that Plaintiffs could move for a declaratory order regarding the choice-of-law question and ultimately dismissed without prejudice when the Court found that New Jersey law applied. Plaintiffs cite NFI's Statement of Facts that it submitted in support of its summary judgment motion, as NFI included numerous facts helpful to Plaintiffs' arguments here.

4. The Court certified the Class in this case on July 1, 2020 (Dkt. 171).

5. On June 9, 2022, the Court granted Plaintiffs' Motion for Partial Summary Judgment, holding that NFI misclassified Plaintiffs and the Class as independent contractors under the New Jersey Wage Payment Law ("NJWPL"), N.J. Stat. § 34:11–4.1 *et seq.* (Dkt. 300).

6. On April 6, 2023, the Court held a hearing on Plaintiffs' Motion to Strike NFI's Expert Report (Dkt. 270). In that Motion, Plaintiffs argued that NFI was incorrect to assert that the damages for the unlawful deductions NFI made in violation of the NJWPL had to be calculated by comparing what the drivers earned as independent contractors to what the drivers theoretically would have earned as employees, and offsetting the amount of deductions by that difference. (P's Motion to Strike NFI's Expert Report at 9-18, Dkt. 270.)

7. That same day, the Court issued an Opinion denying Plaintiffs' Motion to Strike without prejudice (Dkt. 233). The Court held that while "Plaintiffs certainly make persuasive argument," the Court would not decide the issue on a motion to strike an expert report. (Opinion at 7, Dkt. 233.) Instead, the Court directed Plaintiffs to file a motion for summary judgment on this issue. (Opinion at 7, Dkt. 233.)

Dated: April 13, 2023

Respectfully submitted,

/s/ Zachary Rubin

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2023, a true and correct copy of the foregoing document was served on all counsel of record electronically via CM/ECF.

Dated: April 13, 2023

/s/ Zachary Rubin
Zachary Rubin